

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 174 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

GANDABHAI BECHARBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

HL PATEL ADVOCATES for Petitioner

MR SP DAVE ADDL PUBLIC PROSECUTOR for Respondent No. 1

MR HM PARIKH for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 30/06/1999

ORAL JUDGEMENT

#. Heard Mr.Vijay Patel, learned advocate for the
petitioner, Mr.S.P.Dave, Ld. APP for the respondent No.1
- State and Mr.Parikh, Ld. Parikh for the respondents.

#. This revision application arises out of an order
passed by the learned Judicial Magistrate First Class,
Vijapur, District Mehsana below Exh.1 on 10th March, 1999

produced on record at Annexure-B. The order was passed in exercise of powers under Section 451 of the Criminal Procedure Code directing the delivery of Mudamal of Electric Starter to the present respondent No.2 who is the original complainant upon certain conditions. The said order is challenged by the accused by this revision application.

#. Rule. Mr.S.P.Dave, Ld. APP and Mr.Parikh waive service of rule. With the consent of the respective parties, this matter is taken up for final hearing today.

#. Mr.Patel's one of the contentions is that despite the order, the respondent No.2 is not supplying water to the other partners of the petitioner. He contends further that the learned Magistrate has committed an error in placing more reliance on the affidavits rather than the observations made and order passed by the Civil Court. He states that the petitioner is prepared to provide water supply to one and all without obstructions if the starter is given to the petitioner. The learned Magistrate has taken into consideration this aspect and therefore, the order impugned in this revision application deserves to be set aside and the starter may be ordered to be given to the petitioner.

#. Mr.Parikh on the other hand, submitted that civil rights between the parties will be decided by the Civil Court at appropriate stage. Following the ad interim order of the Civil Court, the respondent No.2 is supplying water. He submitted that the learned Magistrate has taken into consideration this aspect. Mr. Parikh's case is that the respondent No. 2 is in possession of the borewell, electric motor and electric connection which is not possessed by the petitioner and if the starter is given to the petitioner, the supply of the water would not be possible as the petitioner undertakes to do. This factor is considered by the Civil Court also.

#. This Court at this stage is concerned with legality, propriety and correctness of the order impugned in this revision. Having gone through the impugned order, it is amply clear that the learned Magistrate has taken into consideration to relevant aspects and after giving detailed discussion of various aspects relating to the dispute of water supply, has passed the order. It may be noted that the starter in question is ordered to be supplied to respondent No.2 on his furnishing a surety of Rs.50,000/-. The Civil Court order is already there in

existence directing the respondent No.2 to continue water supply to the petitioner also. Under these circumstances, this Court finds no illegality, impropriety or incorrectness in the order calling for any interference of this Court for exercising its revisional jurisdiction. The revision therefore must fail and therefore dismissed accordingly. Rule discharged.

Date : 30-6-1999 [A.L.Dave, J.]

*kailash